

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GARY WAYNE WILLIAMS,

Respondent.

Agency No. AC-2033-1

OAH Case No. L-2002100325

PROPOSED DECISION

This matter came on regularly for hearing before Carolyn D. Magnuson, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California on May 13, 2003.

Barry G. Thorpe, Deputy Attorney General, represented the Complainant.

Roger W. Calton, Attorney at Law, represented Gary Williams, who was personally present.

Oral and documentary evidence was received, the record was left open to allow the parties to submit post-hearing briefs. Complainant's submission was received June 2, 2003, and the Respondent's submission was received on June 13, 2003. Each brief was marked for identification, the record was closed, and the matter was submitted.

FACTUAL FINDINGS

1. Carol Sigmann ("Complainant") made the Accusation in her official capacity as the Executive Officer of the Board of Accountancy ("Board"), Department of Consumer Affairs, State of California.

2. Gary Wayne Williams ("Respondent") holds Accountant Certificate number 63793 issued to him by the Board. At all relevant times, the license was in full force and effect.

3. On February 14, 2002, in the United States District Court, Central District of California in case Nnumber 02 CR-0285 J, Respondent was convicted on his plea of guilty of violating Title 26 of the United States Code section 7206(2) (aiding in the preparation and

presentation of a materially false and fraudulent tax return), a crime involving moral turpitude and substantially related to the qualifications, functions, and duties of a Board licensee. Imposition of sentence was scheduled for sometime in July 2003.

4. The facts and circumstances underlying Respondent's criminal conviction are that Respondent was employed as CFO by an investment firm owned by Ernest F. Cossey ("Cossey"). Cossey asked Respondent how he could avoid disclosing the full amount of his income for 1998. Respondent suggested that they might characterize some of the income as being the proceeds of loans made to Cossey. Respondent offered to research the possibility of using that approach, but Cossey instructed Respondent to implement the plan without further research, and Respondent did so.

5. Respondent knew that the money in question was properly characterized as income and should be reported as such to the Internal Revenue Service. Nonetheless, Respondent prepared a personal income tax return for Mr. and Mrs. Cossey for the 1998 tax year in which he under reported the Cossey's income by more than \$2,300,000 resulting in a tax loss to the United States of more than \$700,000.

6. Respondent explained that, in June 1997, he had been diagnosed with non-Hodgkin's lymphoma and had undergone treatment for that condition until mid-October 1997. Because of this treatment, Respondent was unemployed for four months; and for some time thereafter, he was not well enough to be fully employed. As a result, Respondent's finances were severely negatively impacted.

7. Respondent began doing accounting work for Cossey in 1997. Over time, the amount of work increased until, in the spring of 1998, Respondent became employed full time by Cossey's investment firm. Although Respondent held the title CFO, in fact he was little more than a bookkeeper. Cossey was a dictatorial micro-manager who brooked no disagreement from his employees. However, he had been very patient with Respondent about the residual effects of his illness, and Respondent felt a loyalty to Cossey. In addition, Respondent was very dependent on the salary he was paid by Cossey because he was still trying to regain financial stability. Thus, Respondent agreed to do things for Cossey that made Respondent uncomfortable.

8. The investment firm ostensibly offered investments in tax lien deeds that promised to return excellent interest to investors. In fact, the business was a pyramid scheme in which money received from later investors was used to make "interest" payments to the earlier investors. Respondent kept the books and records of the firm and knew that the payments made to the investors far exceeded the income earned by the firm.

9. Anyone familiar with accounting knows what a Ponzi or pyramid scheme is. Cossey's "business" was a classic example of the scam. As an experienced accountant, Respondent had to have known that hundreds of people were investing millions of dollars with no realistic possibility of recouping their original investments. Yet he continued to work for Cossey, and to facilitate this deception.

10. At trial, Respondent reported that his health concerns and his dependence on the salary he received from Cossey caused him to be manipulated into “deferring reporting income” for Cossey. Further, Respondent has a non-aggressive personality, was unable to stand up to Cossey’s demands, and did not have the will to say “I am not doing that.”

11. In mitigation, the Respondent points out that he is an active and respected church member. However, that affiliation does not seem to have had much impact on Respondent, since he was also an active and respected member of the same church at the time he was acting illegally and unethically.

12. Respondent also points out that he has been a CPA for nearly thirty years and this is the sole blemish on his record. He is cooperating with the federal authorities in the investigations and prosecutions of others. Respondent has been married for more than thirty years and has three grown children. He is a Navy veteran himself, and each of his three children is or has been in the armed services.

LEGAL CONCLUSIONS and DISCUSSION

13. Respondent claims that the Complainant cannot sustain the Accusation against him for violation of Business and Professions Code section 490 because the time for him to appeal the conviction had not run at the time of the hearing. Business and Professions Code section 490 provides:

“A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence . . .”

14. When Respondent’s guilty plea was accepted, he stood convicted of the charge to which he pled. However, a judgment will not be entered against Respondent until he has been sentenced. It is from the judgment, not the conviction, that an appeal may be taken. Or, to put it another way, until a judgment is rendered, no appeal of the conviction is possible. Thus, Respondent is correct that discipline may not be imposed on him under the provisions of Business and Professions Code section 490 because the time for appeal of the judgment had not run when the hearing was held.

15. However, the Complainant has alleged violations of Business and Professions Code sections 5100(c) and 5100(i) as a second cause for discipline, and

discipline under those provisions is based on the conduct underlying the Respondent's conviction, not on the conviction itself. Section 5100 provides, in relevant part, that:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

...
(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

...
(i) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

16. The Respondent acted dishonestly and also knowingly prepared, published and disseminated false, fraudulent and materially misleading financial statements, reports or information when he prepared and submitted the false income tax return. This conduct violated the provisions of Business and Professions Code section 5100(a) and (i) and is a separate basis for discipline.


17. In aggravation, Respondent further violated section 5100(j) by aiding and abetting Cossey's investment scam, which resulted in losses to the investors of millions of dollars.

18. Further, when questioned at the hearing, Respondent testified that, at the time he prepared the false tax return, he did not consider his mischaracterizing the Cosseys' income to be either illegal or unethical; he thought of it as being "inappropriate." If, in fact, Respondent did not recognize the corrupt nature of his conduct, that inability demonstrates a profound professional incompetence. If Respondent did recognize the nature of his conduct, but chose to mischaracterize his understanding when testifying, then he lied under oath. It matters little which scenario is correct; neither is tolerable in a Board licensee.

ORDER

Accountant Certificate number 63793, issued Gary Wayne Williams, is revoked.

Dated: August 18, 2003


CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

GARY WAYNE WILLIAMS
21021 Costilla Drive
Diamond Bar, CA 91765

Certificate No. 63793

Respondent.

Case No.AC-2003-1

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Board of Accountancy of the Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on October 23, 2003.

It is so ORDERED on September 23, 2003.

President


For The CALIFORNIA BOARD OF ACCOUNTANCY
CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

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**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2003-1

GARY WAYNE WILLIAMS
21021 Costilla Drive
Diamond Bar, CA 91765

A C C U S A T I O N

Certified Public Accountant Certificate No.
63793

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs (Board).

2. On or about February 12, 1993, the Board issued Certified Public Accountant Certificate Number 63793, to Gary Wayne Williams (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2003, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following sections of the Business and Professions Code (Code).

4. Section 5100 of the Code states:

After notice and hearing the Board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct which includes, but is not limited to, one or any combination of the following causes:

“(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

....

(c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

....

(f) Willful violation of this chapter or any rule or regulation promulgated by the Board under the authority granted under this chapter.

....

(i) Knowing preparation, publication or dissemination of false, fraudulent, or materially misleading financial statements, reports or information.”

5. Section 490 of the Code states:

“A Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order

1 granting probation is made suspending the imposition of sentence, irrespective of a
2 subsequent order under the provisions of Section 1203.4 of the Penal Code.”

3 6. Title 16, California Code of Regulations, section 99, provides that a
4 crime is considered by the Board to be substantially related to the qualifications, functions, or
5 duties of a certified public accountant if, to a substantial degree, it evidences the present or
6 potential unfitness of the certified public accountant to perform the functions authorized by the
7 certificate in a manner consistent with the public health, safety or welfare, including but not
8 limited to, those involving fiscal dishonesty, or breach of fiduciary responsibility of any kind, or
9 dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance
10 of bookkeeping operations.

11 7. Section 5107 of the Code provides, in part, that the Board may
12 request the administrative law judge, as part of the proposed decision in a disciplinary
13 proceedings, to direct any holder of a permit or certificate found in violation of section 5100 (a),
14 (b), (c), (h), (i) or (j), to pay to the Board all reasonable costs of investigation and prosecution of
15 the case, including, but not limited to, attorney’s fees.

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction Of A Crime Substantially Related)

18 8. Respondent is subject to disciplinary action pursuant to sections 5100(a),
19 and (f) of the Code and section 490 of the Code, in conjunction with Title 16, California Code of
20 Regulations, section 99, in that Respondent was convicted of a crime substantially related to the
21 qualifications, functions or duties of a Certified Public Accountant as follows:

22 a. On February 4, 2002, in the United States District Court, Central
23 District of California, in a criminal action entitled United States of America v. Gary W.
24 Williams, case number 02 CR-0285 J, Respondent was convicted, by his plea of guilty, of
25 violating Title 26, United States Code, section 7206 (2).

26 b. The circumstances surrounding the conviction are that on or about March
27 31, 2000, Respondent willfully aided and assisted in the preparation and presentation to the
28 Internal Revenue Service of a joint 1998 U.S. Individual Income Tax Return on behalf of his

1 clients that was materially false, in that Schedule C for his clients' return reported a gross income
2 on line 7 of \$375,857; a figure which Respondent knew at the time he prepared the return,
3 greatly understated his clients' true gross income which was actually \$2,680,853.00. The
4 resulting tax loss to the United States because of this under-reporting was \$718,824.00.

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6 SECOND CAUSE FOR DISCIPLINE

7 (Dishonesty / False Information)

8 9. Respondent is subject to disciplinary action pursuant to section 5100(c)
9 and (i) of the Code by reason of the facts alleged in paragraph 8.

10
11 PRAYER

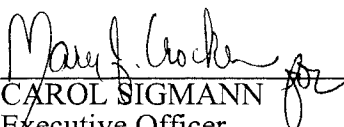
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

14 1. Revoking, suspending or otherwise imposing discipline upon Certified
15 Public Accountant Certificate Number 63793, issued to Gary Wayne Williams;

16 2. Ordering Gary Wayne Williams to pay the California Board of
17 Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to
18 Business and Professions Code section 5107;

19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: August 27, 2002

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23 CAROL SIGMANN
24 Executive Officer
25 California Board of Accountancy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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